

**IN THE EUROPEAN COURT OF HUMAN RIGHTS**

Application no. 21660/18

**BETWEEN**

S.S.

**Applicant**

- and -

Italy

**Respondent**

- and -

Amnesty International

Human Rights Watch

**Interveners**

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**WRITTEN SUBMISSIONS ON BEHALF OF THE  
INTERVENERS**

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1. **Introduction:** These submissions are presented on behalf of Amnesty International (AI) and Human Rights Watch (HRW) (“the Interveners”) pursuant to the leave to intervene granted by the President of the Section on 14 October 2019, under Rule 44 § 3 of the Rules of Court. The submissions address: (A) the existence of Italy’s jurisdiction under Article 1 European Convention on Human Rights (“ECHR”), as a result of its decisive influence over Libya’s migration policy and practice; and (B) the conditions for migrants<sup>1</sup> in Libya and the consequences of cooperation activities leading to the containment of migrants in the country, in light of Italy’s responsibilities under Article 3 ECHR.

## **A. Extraterritorial jurisdiction of States under Article 1 ECHR**

### **I. Overview of ECHR standards**

2. This Court’s longstanding jurisprudence recognises that States’ protection of the rights and freedoms under the ECHR, as per Article 1, may extend to acts performed, or producing effects, outside their territory.<sup>2</sup> While this Court has developed guidance on extraterritorial jurisdiction, its case-law on this issue continues to evolve, taking into account the specificities of each case, thus allowing the Convention to remain practical and effective and not theoretical and illusory.<sup>3</sup> This Court considers that extraterritorial jurisdiction can generally arise by virtue of the presence of a Member State [MS] agent exerting ‘*control and authority over an individual*’ in a third country or due to the MS’s effective control over an area.<sup>4</sup> This Court also considered that jurisdiction can exist when a MS ‘*exercises all or some of the powers*’ of a country ‘*through [its] consent, invitation or acquiescence*’.<sup>5</sup>
3. In *Ilaşcu and Others* and subsequent cases, the Court indicated that jurisdiction can arise when a state operates ‘*under the decisive influence*’ of a MS.<sup>6</sup> Importantly, in these cases this Court links the concept of ‘*decisive influence*’ to the existence of a relation of dependency of some degree, to the effect that it considered ‘*the fact that the local administration survives as a result of the [MS’s] military and other support*’ to entail ‘*that State’s responsibility for its policies and actions*’.<sup>7</sup> This is irrespective of the active involvement of the influencing State in the alleged human rights violations.<sup>8</sup> Various factors can be relevant in establishing if decisive influence exists.<sup>9</sup> The Court’s approach to the above cases should be taken as a place of departure to address situations where the relation of dependence is such

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<sup>1</sup> The Interveners note that in this document the term ‘migrants’ is understood to include any individual on the move outside of their country of nationality or citizenship, including for reasons such as needing international or other protection.

<sup>2</sup> As summarised in *N.D. and N.T. v Spain*, nos. 8675/15 8697/15, § 49-51 and cases cited therein.

<sup>3</sup> ECtHR, Guide on Article 1 of the ECHR, 31 August 2019, § 28-29, <https://bit.ly/2NMPn2r>, and Renucci, Jean-François. Introduction to the ECHR: the rights guaranteed and the protection mechanism. Vol. 1. Council of Europe, 2005, p.6, <https://bit.ly/36W3YBI>.

<sup>4</sup> ECtHR Guide on Article 1, §29 and subsequent.

<sup>5</sup> ECtHR Guide on Article 1, §33.

<sup>6</sup> *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99 § 392

<sup>7</sup> ECtHR Guide on Article 1, §47, *Cyprus v. Turkey*, no. 25781/94, §§ 76-77; *Catan and ors. v. Moldova and Russia* nos. 43370/04 8252/05 18454/06, § 122 and others.

<sup>8</sup> In *Mozer v. The Republic of Moldova and Russia*, no. 11138/10, §101, the Court accepted that there was ‘no evidence of any direct involvement of Russian agents in the applicant’s detention and treatment’.. no.

<sup>9</sup> *Catan and ors.*, above in full, § 121, on Russia’s various forms of support.

that a MS does exert decisive influence over a third party's policy and practice, thus attracting that state's jurisdiction under the ECHR.

4. The Interveners respectfully submit that even in the absence of physical occupation of a territory, States may nonetheless control areas of policy of third party entities. This could be argued by reversing the Court's statement in *Catan and others v. Moldova and Russia*. Discussing situations where control on an area is established 'as a consequence of lawful or unlawful military action', the Court held that '*Where the fact of such domination over the territory is established, it is not necessary to determine whether the [MS] exercises detailed control over the policies and actions of the subordinate local administration*'.<sup>10</sup> Conversely, where such domination is lacking, it could be argued that other forms of control and influence should be sufficient to bring a situation within a State's jurisdiction for the purpose of Article 1 ECHR. It is significant that this Court found the jurisdiction of MS beyond situations of military occupation, including following developments occurring after the facts of the case.<sup>11</sup> Failure to act to prevent human rights violations in the country where the MS exercises influence was also considered relevant in *Mozer*.<sup>12</sup>

## II. Conduct of the Italian authorities and their relevance under ECHR Article 1 standards

5. **The Italy-Libya relation – legal and diplomatic framework:** This Court acknowledged the longstanding cooperation between Italy and Libya on migration matters in *Hirsi Jamaa and others v Italy*.<sup>13</sup> From the beginning of 2017, Italy has used the resumption of cooperation with Libya and the funding, political and material support that came with it to outsource migration control to Libya, while maintaining power to decide on its practical aspects. Following the change of policy resulting from *Hirsi*, between 2013 and 2017, when crossings increased sharply, Italian and other ships operating in the Mediterranean consistently disembarked those rescued in Europe and, most often, in Italy<sup>14</sup> The Italian Maritime Rescue Coordination Centre (IMRCC) would coordinate SAR operations not only in Italy's SAR Region but also in the area of the central Mediterranean between the southern limit of its SAR region and Libya's territorial waters, in line with international law standards (SAR/SOLAS).<sup>15</sup>
6. Transferring coordination responsibilities to Libya would have been virtually impossible before 2017, as the country had not declared a SAR Region, constituted an MRCC or set up a coast guard function capable to receive and act upon distress communications. Between 2016 and 2017, Italy's actions created conditions for Libya to build such capacity. On 2 February 2017, Italy signed a bilateral

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<sup>10</sup> *Catan and others.*, §106.

<sup>11</sup> See summary of political, military and economic developments considered in *Catan*, as listed by *Mozer v Moldova and Russia*, no. 11138/10 at §103.

<sup>12</sup> *Ivantoc and ors v Moldova and Russia*, no. 23687/05, §119: Russia '*continued to do nothing either to prevent the violations of the Convention allegedly committed...*'. Cited by *Mozer* at §106

<sup>13</sup> Bilateral agreement of 29 December 2007 and the Treaty on Friendship of 30 August 2008, particularly Article 19 - provision for efforts to prevent clandestine immigration in the countries of origin of migratory flows.

<sup>14</sup> AI, *Libya's dark web of collusion: Abuses against Europe-bound refugees and migrants*, December 2017, p.42

<sup>15</sup> AI, *Lives adrift: Refugees and migrants in peril in the central Mediterranean*, September 2014

Memorandum of Understanding (MoU) with Libya's Government of National Accord (GNA)<sup>16</sup> as a framework for joint efforts to stem irregular migration and smuggling,<sup>17</sup> with the clear aim of enabling Libyan authorities to conduct operations at sea and disembark people in Libya, with Italy's material, technical and political support, coordination and capacity building, though without the physical presence of Italian forces in SAR operations. The combined effect of Italy's withdrawal from the sea, its obstruction of SAR NGOs and active deferral of responsibility to the Libyan authorities contributed to this goal.

7. **Italy pursued these activities to enable Libya to conduct sea operations leading to the interception and return to Libya of migrants found at sea, and so to create the conditions for** at least the appearance of Libya's ownership of operations at sea with the effect, and arguably the intent, to achieve the same outcome of the pushback practices and policies that this Court found fell afoul of Convention standards in *Hirsi*, while trying to **circumvent Italy's relevant obligations**. The Interveners submit that, in view of the extent and pervasiveness of Italy's role in Libya's migration and SAR system, Libya has acted under its decisive influence since at least 2017, to an extent that Italy should be found to have exercised jurisdiction, at least concurrently with Libya, in migration-related operations conducted by Libyan forces. The Interveners have conducted research on the range of acts realised by Italy to pursue this strategy and reported on their human rights implications throughout the post-*Hirsi* period, from 2013 to 2019.<sup>18</sup>
8. **Italy's support to Libya enabling it to intercept and 'pull back' migrants:**
  - a. **Support in declaring Libya's SAR region and establishing an MRCC in Libya:** In early 2017, the Italian government requested the Italian Coast Guard (ICG) to initiate activities instrumental to the declaration of Libya's SAR region and to assist Libya in setting up its MRCC.<sup>19</sup> Relevant activities followed suit,<sup>20</sup> mostly funded by the EU.<sup>21</sup> As a result, Libya notified the creation of its SAR region to the International Maritime Organization (IMO), in July 2017,<sup>22</sup> and in December 2017.<sup>23</sup> IMO

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<sup>16</sup> This was then backed up by the members of the European Council in their Malta Declaration, adopted the following day, <https://www.consilium.europa.eu/en/press/press-releases/2017/02/03/malta-declaration/>.

<sup>17</sup> Memorandum d'intesa sulla cooperazione nel campo dello sviluppo, del contrasto all'immigrazione illegale, al traffico di esseri umani, al contrabbando e sul rafforzamento della sicurezza delle frontiere tra lo Stato della Libia e la Repubblica Italiana, 2 February 2017, <https://www.asgi.it/wp-content/uploads/2017/02/Libia.pdf>

<sup>18</sup> See Annex for a list of the Interveners' relevant publications between 2013 and 2019.

<sup>19</sup> AI, *Libya's dark web of collusion*, December 2017, p.45. A project agreement between ITG and EU Commission recognized that an efficient LCGN would be instrumental to border control activities to tackle irregular migration. <https://www.guardiacostiera.gov.it/stampa/Pages/isf-bv-051.aspx>.

<sup>20</sup> <https://www.guardiacostiera.gov.it/stampa/Pages/comunicato-stampa-11-ottobre-2018.aspx>

<sup>21</sup> In July 2017 the EU Trust Fund for Africa approved a 46.3million euro programme largely focussed on increasing the operational capacity of the LCGN through, inter alia, setting up operational rooms to enable the LCGN to co-ordinate operations, assisting with the establishment of a Libyan MRCC and demarcating and declaring a Libyan SAR zone. See <https://bit.ly/33NU1nu> and AI, *Libya's Dark Web of Collusion*, above, p.45.

<sup>22</sup> The first declaration was then withdrawn due to technical issues. At a press conference in Tripoli on 10 August 2017, Libyan authorities announced the declaration and stated that foreign vessels would not be allowed to enter the zone without prior authorization, in breach of law of the sea principles regarding freedom of navigation in the high seas (UNCLOS Art.87).

<sup>23</sup> During the same month, the ICG wrote to AI, indicating that work towards the establishment of a MRCC in Libya was still at an initial stage. Letter dated 1 December 2017, Ref. 0149176, in file with AI. A presentation by the ICG, dated 28 February 2018, included a timeline for the project, indicating that only from July 2021 "The Libyan SAR Region is under the LCG control",

confirmed the establishment of the Libyan SAR region in June 2018.<sup>24</sup> As a result, the Libyan authorities assumed responsibility for coordinating SAR operations in the region, including the responsibility to instruct rescue vessels on where to disembark the rescued, also on its territory.

**b. Donation of vessels and training of LCGN:**<sup>25</sup> In May 2017, Italy provided the LCGN with 4 fast patrol boats<sup>26</sup> and committed to donate 6 more.<sup>27</sup> Italy allocated 2.5 million euros to maintaining the boats and related activities.<sup>28</sup> In parallel, it trained LCGN staff, including those to be employed on those boats, both independently and via the Italy-led naval operation EunavforMed Sophia.<sup>29</sup>

**c. Operational assistance in SAR operations and presence on scene:** Italy's cooperation has crucially involved also the physical presence of Italian personnel in Libya, including its territorial waters. On 2 August 2017, in agreement with the Libyan government,<sup>30</sup> Italy launched naval operation 'Nauras' in Libyan waters and deployed navy officials on Libyan soil to support the contrast of irregular migration and smuggling.<sup>31</sup> Through an Italian Navy vessel docked in the port of Tripoli,<sup>32</sup> Italy directly supported the coordination of SAR operations, in particular by providing the Libyan naval authorities with the technical capabilities necessary to ensure communication and coordination between LCGN, IMRCC and any state or private ships operating at sea. As highlighted in a ruling by the Court of Ragusa in April 2018,<sup>33</sup> these capabilities were instrumental to enabling the LCGN to locate migrant boats at sea and issuing instructions to any ships in the area, including instructions to stay away from migrant boats as the LCGN would approach them.<sup>34</sup> With its formal intervention in Libyan territory since 2017, with Libya's consent, and the formal assistance provided in the exercise of migration management and border control, Italy's conduct should therefore be seen as meeting the conditions for extra territorial jurisdiction established by this Court.

**d. Participation in SAR operations conducted by the LCGN:** The Interveners' research indicates

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<https://bit.ly/2Kc78am>.

<sup>24</sup> <https://gisis.imo.org/Public/COMSAR/NationalAuthority.aspx>

<sup>25</sup> Training of LCGN and Navy staff was carried out via EunavforMed Operation Sophia and through Italian programmes. See: <https://bit.ly/2JNBRdO> and [www.facebook.com/EunavforMed/posts/1518004711608771](https://www.facebook.com/EunavforMed/posts/1518004711608771)

<sup>26</sup> AI, *Libya's dark web of collusion*, pp.34-36.

<sup>27</sup> See relevant press releases by the Italian Ministry of Interior at: <https://bit.ly/32E6BV4> and <https://bit.ly/33D90Rp>.

<sup>28</sup> Law no. 232, 11 December 2016, Article 1 c.621 174 Italian Ministry of Foreign Affairs, Director General for Italians abroad and migration policies, Decree 4110/47 of 28 August 2017, [www.asgi.it/wp-content/uploads/2017/11/Allegato\\_2.pdf](http://www.asgi.it/wp-content/uploads/2017/11/Allegato_2.pdf)

<sup>29</sup> In June 2016, the EU amended the mandate of the operation to include capacity-building and training of the LCGN. As of November 2017, 195 Libyan personnel had undergone training. AI, *Libya's dark web of collusion*, p.45.

<sup>30</sup> Italian Chamber of Deputies, Deliberazione del consiglio dei ministri in merito alla partecipazione dell'Italia alla missione internazionale in supporto alla guardia costiera Libica, 28 July 2017, at: <https://bit.ly/32iCPVD>

<sup>31</sup> Ibid., in *Libya's dark web of collusion* the Italian mission aims to provide 'technical and logistical support and advice to the Libyan navy, including the LCG; protection for Libyan vessels involved in activities against irregular migration; reconnaissance capabilities to determine what operations should be carried out...support to set up a centre for co-ordinating operations'.

<sup>32</sup> Italian Navy vessels rotate in this role. The first to be deployed was ship Tremiti (August-December 2017), followed by Capri (December 2017 - March 2018) and Caprera (March-September 2018).

<sup>33</sup> Tribunale di Ragusa, Ufficio del Giudice per le indagini preliminari, Decreto di rigetto di richiesta di sequestro preventivo, 16 April 2018, <https://bit.ly/34CM9p6>. The decision was confirmed in May, see: *Giornale di Sicilia*, Il Tribunale del Riesame di Ragusa conferma il dissequestro dell'Ong Open Arms, 17 May 2018

<sup>34</sup> Media investigations have highlighted how the LCGN has used lines of Italian vessels to communicate, that its emergency lines are not fully functional, and that its officers in charge of answering phone calls often do not speak English. See: <https://bit.ly/2rAAAAJ> and <https://bit.ly/2p981cH>.

that, throughout 2017, LCGN operations were increasingly conducted with Italian authorities' input, which alerted them of the presence and position of boats in distress, and even directly participated in operations at sea. On 27 September 2017, a LCGN vessel intercepted two migrant boats in international waters, while testing a boat recently repaired by Italian officials. After receiving assistance from the Italian warship Andrea Doria, which was in the area and provided lifejackets, the LCGN ship took all of the approximately 200 people back to Libya.<sup>35</sup>

**e. Transfer of responsibility for SAR operations to the LCGN:** As of 2017, the IMRCC increasingly sought to transfer responsibilities for the coordination of SAR operations to the LCGN. As of at least May 2017, IMRCC started to transfer information and coordination to the Libyan authorities, in those cases when IMRCC had been informed first and had therefore assumed such responsibility, and to decline to indicate a place of safety for disembarkation to rescue vessels that had conducted operations in the Libyan SAR Region. On 10 May 2017, the IMRCC received a distress call about a boat in trouble and instructed the German rescue NGO Sea-Watch to provide assistance, before transferring the coordination to the LCG, which intervened with one of its speedboats to take over the operation.<sup>36</sup> IMRCC also began instructing rescue NGOs to wait before conducting certain rescue operations, to facilitate the intervention of the LCGN. On 15 August 2017, a vessel run by NGO Migrant Offshore Aid Station (MOAS) initiated a rescue operation, but IMRCC reportedly requested that the crew wait for the LCGN to intervene before taking people on board. The LCGN failed to intervene and after two hours IMRCC authorised MOAS to take people on board and transfer them to Italy.<sup>37</sup> On 24 November 2017, NGO SOS Méditerranée reported that IMRCC instructed its rescue vessel Aquarius to stand by as the LCGN conducted the interception of three rubber boats in international waters, after which everyone was returned to Libya. The IMRCC's approach, consolidated over time, must be deemed as an element of the established framework of cooperation and support provided by Italy to Libya, instrumental to achieving the aim of preventing migrants' arrivals in Italy and ensuring the LCGN's ownership of operations at sea. This should be read with Italy's failure to offer a place of safety in its territory following rescues in the Libyan SAR region, including after the transfer of coordination for SAR operations. The decisive influence exercised over Libya through the support described above attracted Italy's jurisdiction, for the purpose of its ECHR obligations.

**f. Activities to hamper the involvement of NGOs in rescues:** Italy's strategy to ensure the undisturbed operation of the LCGN included activities to obstruct the action of NGOs, through policies and practices discouraging their intervention. In 2017, NGOs were continuously slandered by authorities and subjected to baseless criminal investigations. In July 2017 the government drafted a

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<sup>35</sup> Italian Ministry of Defence, *Difesa – Marina Militare: unità della Guardia Costiera libica effettua prima operazione di salvataggio dopo le verifiche di efficienza*, 27 September 2017, <https://bit.ly/36Sq4F0>. Also, AI, *Libya's dark web of collusion*.

<sup>36</sup> HRW, EU: *Shifting Rescue to Libya Risks Lives*, June 2017, <https://bit.ly/32BUYxO>.

<sup>37</sup> AI, *Libya's dark web of collusion*, December 2017, p.48.

code of conduct for NGOS, substantially restricting SAR activities.<sup>38</sup>

### **B. Article 3 consequences of Italy's role in Libyan migration policies and practice**

9. It is a well-established principle under this Court's jurisprudence that States' obligations under Article 3 shall be understood to include the internationally recognised principle of non-*refoulement*.<sup>39</sup> The non-*refoulement* obligation also applies to indirect or chain *refoulement*.<sup>40</sup> Procedurally, Article 3 imposes positive obligations on MS, who have a duty to ensure that people under their jurisdiction '*would not face a real risk of being subjected to treatment contrary to Article 3 in the event of repatriation*'.<sup>41</sup> Addressing the situation of Libya in *Hirsi*, this Court recalled that this obligation '*is all the more important when...the intermediary country is not a State Party to the Convention*'.<sup>42</sup> It found on the facts that the material conditions for migrants in the country were such that, by transferring the applicants there, '*the Italian authorities, in full knowledge of the facts, exposed them to treatment proscribed by the Convention*'.<sup>43</sup> Since *Hirsi*, the Interveners have continued to document abuses against migrants by Libyan agents in the country, including guards operating in detention centres managed under the responsibility of the General Directorate for Combating Illegal Migration (DCIM) within the Ministry of Interior, and members of the LCGN, and Libya's inability or unwillingness to address violations by trafficking and smuggling groups.
10. Research published by the Interveners between 2013 and 2019<sup>44</sup> documented how the treatment experienced by migrants in Libya, acknowledged in *Hirsi*, continues unchanged to date, and examined how cooperation by the EU and its member states – Italy in particular – with Libya on migration has been pursued despite the well documented abuse of migrants there. Abuses facing migrants start as early as during operations at sea conducted by the LCGN and extend to the often-automatic detention in centres on land. The Interveners documented episodes where the LCGN engaged in reckless conduct during rescue operations in international waters and used threats and violence against migrants on board boats in distress.<sup>45</sup> The Interveners also documented the systematic use of arbitrary detention, often in inhumane conditions, and the persistence of torture and other ill-treatment, in particular in the form of rapes and beatings, as well as of unlawful killings, sexual exploitation and forced labor.<sup>46</sup> The state of migrants' rights in Libya is well-known and has been widely documented by international

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<sup>38</sup> AI, *Libya's dark web of collusion*, December 2017, p.48

<sup>39</sup> *Saadi v. the UK*, no. 13229/03 § 56, *Hirsi* § 123.

<sup>40</sup> *Hirsi*, § 146

<sup>41</sup> *Hirsi*, § 146 citing *T.I. v. the United Kingdom* (dec.), no. 43844/98, ECHR 2000-III, and *M.S.S. v. Belgium and Greece*, cited above, § 342), and 147 '*It is a matter for the State carrying out the return to ensure that the intermediary country offers sufficient guarantees to prevent the person concerned being removed to his country of origin without an assessment of the risks faced*'. This Court has provided detailed guidance on the requirements for State's assessment of whether return decisions may expose individuals to risks under this Article. See: *F.G. v. Sweden*, no. 43611/11, §111.

<sup>42</sup> *Hirsi*, §§ 146-47

<sup>43</sup> *Hirsi* § 137

<sup>44</sup> See Annex listing publications from the Interveners

<sup>45</sup> HRW, *EU: Shifting rescue to Libya risks lives*, June 2017; AI, *Libya's dark web of collusion*, December 2017; HRW, *Disputes Over Rescues Puts Lives At Risk*, July 2018; HRW, *No Escape from Hell*, January 2019

<sup>46</sup> AI, *Libya's dark web of collusion*, pp.26-33, HRW, *No Escape from Hell*, January 2019

observers. UN bodies called the country's situation a "human rights crisis" for migrants.<sup>47</sup> The severity of the situation was addressed by the UN Secretary General in his update to the UN Security Council in September 2017,<sup>48</sup> while in September 2018, the UNHCR reiterated its call on all countries "to allow civilians (Libyan nationals, former habitual residents of Libya and third-country nationals) fleeing Libya access to their territories". UNHCR also urged all countries to suspend forcible returns to any part of Libya, including of anyone rescued at sea.<sup>49</sup> **The Interveners consider that Italian authorities pursued cooperation activities with Libya, with the purpose of ensuring as many as possible migrants rescued or intercepted at sea would be returned to Libya while they knew or ought to have known that this would result in exposing people to arbitrary detention, ill-treatment and other serious human rights violations.**

11. **Risk of ill-treatment at sea as a result of cooperation with the LCGN:** In 2017, the LCGN on multiple occasions harassed, intimidated and threatened NGO rescue boats particularly in mid-2017. The Interveners have spoken to multiple NGOs who perform rescue operations in the Mediterranean about these incidents. For example, on 23 May 2017, crew aboard rescue ship Aquarius witnessed – and videotaped – LCGN approaching migrants on a boat, firing shots into the air. Survivors testified that the officers had demanded phones and money from them and that after hearing the shots, panicked people leapt into the sea.<sup>50</sup>
12. Monitors on the scene reported that on 26 May 2017 LCGN fired shots at an ICG vessel in international waters, as it was taking rescued migrants to disembark on Lampedusa.<sup>51</sup> Overheard radio communication between a nearby Italian Navy ship and the LCGN made it clear that the LCGN boat had fired the shots because they mistook the ICG vessel for a migrant boat. The crew of NGO rescue vessel Golfo Azzurro reported that the LCGN threatened them in international waters, including by shooting in the air, in order to make them leave the area, on both 7 and 15 August 2017.<sup>52</sup> On 26 September 2017, an LCGN boat approached a vessel run by the NGO Mission Lifeline through a dangerous manoeuvre and fired one shot, before two LCGN officials jumped on board the NGO ship and said they wanted to take those rescued back to Libya. The NGO crew explained that they could not comply with the request because they were bound by the principle of non-*refoulement*. The Libyan

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<sup>47</sup> A December 2016 report from the United Nations Office of the High Commissioner for Human Rights and the UN mission in Libya documented widespread malnutrition, forced labor, illness, beatings, sexual abuse, torture, and other abuses in immigration detention centres in Libya: UN Office of the High Commissioner for Human Rights (OHCHR), "Detained and Dehumanised" - Report on Human Rights Abuses Against Migrants in Libya, 13 December 2016, <https://bit.ly/2Q6XqKo>

<sup>48</sup> UN, Report of the Secretary-General pursuant to Security Council resolution 2312 (2016), 7 September 2017, §42, [www.un.org/ga/search/view\\_doc.asp?symbol=S/2017/761](http://www.un.org/ga/search/view_doc.asp?symbol=S/2017/761); "The conditions of detention in most facilities are characterized by chronic severe overcrowding, poor hygiene, and a lack of access to basic necessities or adequate medical care. Undernutrition in adults and children is rampant, particularly in facilities outside Tripoli. In some facilities, the conditions of detention in themselves may amount to torture or other ill-treatment."

<sup>49</sup> UN High Commissioner for Refugees (UNHCR), UNHCR Position on Returns to Libya - Update II, September 2018, available at: <https://www.refworld.org/docid/5b8d02314.html>

<sup>50</sup> AI, *Libya's dark web of collusion*, December 2017, p.35.

<sup>51</sup> See: <https://www.avvenire.it/attualita/pagine/guardia-costiera-libica-spara-contro-vedetta-italiana>

<sup>52</sup> AI, *Libya's dark web of collusion*, p. 37, citing: among others, Reuters, 15 August 2017, <https://reut.rs/2Cni94E>



officials threatened that they would sink the ship the next time they found it in “their waters”.<sup>53</sup> The OHCHR also reported similar behaviour from the LCGN.<sup>54</sup> The Interveners also heard similar descriptions of abusive use of force and firearms from individuals who were detained after LCGN intercepted their boats. One woman from a boat with approximately 170 people stopped by the LCGN in international waters explained: “Men on the large Libyan boat threw us a rope ... The Libyans shot into the air and threatened us: ‘If you don’t tie it onto the boat then we will shoot at you.’”<sup>55</sup> A detained male reported a similar issue saying that individuals on the LCGN boat that approached them ‘shot into the water next to where we were. They also came very close to our boat and started to make waves to scare us. People got scared and finally started to board their ship’.<sup>56</sup> In April 2017 an LCGN commander told the Interveners that the use of force against migrants during rescue operations was “necessary to control the situation as you cannot communicate with them. Some can swim but others not.”<sup>57</sup>

13. **Collusion with Criminal Gangs:** A confidential interim report from the UN Panel of Experts on Libya,<sup>58</sup> leaked to the press, concluded that most smuggling and trafficking groups have links to official security institutions. The report expresses concern ‘over the possible use of state facilities and state funds by armed groups and traffickers to enhance their control of migration routes’. A previous report from the same Panel in June 2017 had already concluded that ‘smugglers, as well as the Department to Counter Illegal Migration and the coastguard are directly involved in [...] grave human rights violations’ against migrants.<sup>59</sup> In June 2018, the UN Security Council imposed sanctions on six Libyans accused of human smuggling and trafficking including the head of a coast guard unit.<sup>60</sup> The Interveners interviewed many migrants who described how smugglers colluded with the LCGN. Interveners’ research reveals that the collusion between smugglers and the LCGN occurs through 3 main methods: LCGN officers escort boats until they reach international waters; boats are marked to show that they belong to a smuggler who has paid for ‘safe passage’; or the name of the “right” smuggler is communicated to LCGN staff conducting interceptions.<sup>61</sup> Many migrants also reported that criminal gangs engaging in trafficking and exploitation had access to detention centres and

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<sup>53</sup> AI, *Libya’s dark web of collusion*, citing Information shared by Mission Lifeline via email on 5 October 2017. See also Steve Scherer, *Rescue ship says Libyan coast guard shot at and boarded it, seeking migrants*, Reuters, 26 September 2017, <https://reut.rs/2NU7Wlg>.

<sup>54</sup> OHCHR, “*Detained and Dehumanised*”, above pp.19-20

<sup>55</sup> HRW, *Disputes over rescues puts lives at risk*, July 2018, <https://bit.ly/36Sumfn>

<sup>56</sup> <https://www.hrw.org/report/2019/01/21/no-escape-hell/eu-policies-contribute-abuse-migrants-libya>

<sup>57</sup> HRW, EU: Shifting rescue to Libya risks lives, Italy should direct safe rescues, June 2017; <https://www.hrw.org/news/2017/06/19/eu-shifting-rescue-libya-risks-lives>;

<sup>74</sup> HRW, No escape from hell, January 2019, citing: United Nations, “Interim Report of the Panel of Experts Established Pursuant to Resolution 1973 (2011) Concerning Libya.” On file with Human Rights Watch.

<sup>59</sup> UN, Final report of the Panel of Experts on Libya established pursuant to resolution 1973 (2011), 1 June 2017, [undocs.org/en/S/2017/466](https://undocs.org/en/S/2017/466), § 104

<sup>60</sup> <https://www.un.org/press/en/2018/sc13371.doc.htm> and <https://bit.ly/32CH6nh>. In 2019 it emerged that, Abd al Rahman al-Milad, head of the Zawiya branch of the LCGN, and, according to the UN report, ‘directly involved in the sinking of migrant boats using firearms’, was at meetings with Italian officials in Mineo and Rome in May 2017: <https://bit.ly/2Cz0AOU> (ITA) <https://bit.ly/2X5ecce> (ENG)

<sup>61</sup> AI, *Libya’s dark web of collusion*, pp.37-40.

colluded with guards operating there.<sup>62</sup>

14. **Prolonged arbitrary detention as a result of interception at sea by the LCGN:** Migrants without a regular status in Libya are detained based on laws that criminalise undocumented entry, stay and exit, which can be punished by a prison sentence, a fine and ultimately deportation.<sup>63</sup> The law does not indicate maximum terms for migration detention, and there are no formal procedures in place allowing detainees access to a lawyer or any opportunity to challenge the decision to detain them.<sup>64</sup> Coupled with the absence of an effective system to protect asylum-seekers and victims of trafficking, mass, arbitrary and indefinite detention has become the primary migration management system in Libya. When the LCGN –or other Italy-backed Libyan authorities, such as the General Administration for Coastal Security (GACS) under the Ministry of Interior – intercept boats at sea, they bring migrants back to Libya and routinely transfer them to DCIM detention centres. The support received from Italy and the EU massively increased Libya’s operational capacity and since 2016 the LCGN has intercepted tens of thousands of people at sea and returned them to Libya, to be placed in detention centres.<sup>65</sup>
15. **Abuse in detention:** Individuals arbitrarily detained in DCIM centres are held in deplorable conditions.<sup>66</sup> As recently as July 2018, the Interveners documented inhumane conditions that included severe overcrowding, unsanitary conditions, poor quality food and water that has led to malnutrition, lack of adequate healthcare, and disturbing accounts of violence by guards, including beatings, whippings, and use of electric shocks. The detention of children in unsuitable conditions and allegations of rape and beatings of children by guards and smugglers were also documented.<sup>67</sup> Research by the Interveners includes testimonies by male and female detainees, held after being intercepted at sea, describing various forms of torture and other ill-treatment.<sup>68</sup> DCIM guards are directly involved in torturing and otherwise ill-treating migrants, very often in order to extort a ransom from them or their families in exchange for their release from indefinite arbitrary detention. The Interveners submit that to date the conditions and treatment of migrants in Libyan centres has remained substantially the

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<sup>62</sup> AI, *Libya’s dark Wweb of Ccollusion*

<sup>63</sup> AI, *Libya’s dark web of collusion*, p.20, citing Law no. 6 of 1987 Organizing the Exit, Entry and Residence of Foreign Nationals in Libya, 20 June 1987

<sup>64</sup> HRW, *No escape from hell*, January 2019

<sup>65</sup> The presence of UN agencies at points of disembarkation in Libya has limited benefits, as Libyan authorities continue to perpetrate violations and those disembarked are immediately transferred to detention centres. See e.g. IOM, *IOM deplures death of migrant, killed Thursday upon disembarkation in Tripoli*, 19 September 2019, <https://www.iom.int/news/iom-deplures-death-migrant-killed-thursday-upon-disembarkation-tripoli>.

<sup>66</sup> AI, *Libya’s dark web of collusion*, pp.30-33.

<sup>67</sup> HRW visited four DCIM centres in early July 2018. These were Tajoura and Ain Zara centres, both located on the outskirts of Tripoli, Zuwara centre in the town of the same name near the border with Tunisia, and the centre in the area of al-Karareem, near Misrata, a city to the east of Tripoli. They witnessed overcrowding, unsanitary conditions, inadequate health care, HRW, *No escape from hell*, January 2019.

<sup>68</sup> HRW, *No escape from hell*, July 2019, includes testimonies from detainees in various detention centres who have endured or witnessed abuses: one woman held in detention after an interception at sea said they “beat you with a pipe ... One man, they beat him so bad and they gave him electric shocks ...a man from Sierra Leone tried to escape but they caught him. They beat him unconscious”; a woman who was seven-months’ pregnant, described a guard beating her with a hose; another confirmed: “There is ill treatment here and beatings ... they beat women and flog women on the hand even if you are pregnant. One man tried to escape. They tied his neck like a dog to his legs so he cannot move his legs. They beat him seriously.” Another intercepted at sea confirmed “they will beat us with wooden sticks or plastic tubes”.

same, and there has been no development that could justify departing from this Court's assessment in *Hirsi*.<sup>69</sup>

16. **Italian Knowledge of Abuses:** At the time when they began engaging with Libya on migration-related cooperation, Italian authorities were aware of the widespread human rights violations and abuses suffered by migrants in Libya, and that the country lacked capacity to safely carry out SAR operations or to afford adequate protection to migrants in the event of their disembarkation in Libya.<sup>70</sup> Indeed, not only should Italian authorities have been aware of the long list of UN reports detailing such situation,<sup>71</sup> but in multiple circumstances Italian authorities openly acknowledged abuses. For example, in August 2017 Italy's Deputy Minister for Foreign Affairs, signalling partial disagreement with the government's decision to cooperate with the LCGN, noted Italian ships should keep collecting migrants, including those intercepted by Libyan authorities, "because taking them back to Libya, at this moment, means taking them back to hell."<sup>72</sup> In a letter to AI on 3 November 2017, Ambassador Mariangela Zappia, Diplomatic Counselor to the Italian Prime Minister, declared inter alia: "We are on the front line for the improvement of living conditions in the reception centres for migrants in Libya – *whose problems have been well known to us for a long time* – in cooperation with the main actors and international agencies."<sup>73</sup> (emphasis added)
17. In conclusion no meaningful action has been taken to avoid the predictable and foreseeable result that decisive support for and cooperation with Libya would expose thousands of people to serious human rights violations, including in violation of Article 3. On the contrary, the MoU between Italy and Libya did *not* condition support and assistance upon human rights standards and recognition of the right to seek asylum, helping to perpetuate the horrific human rights violations against migrants in Libya.

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<sup>69</sup> See also: UNSMIL/OHCHR, *Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya*, 20 December 2018, pp.38-47.

<sup>70</sup> AI, *Libya's dark web of collusion*, December 2017.

<sup>71</sup> A list is provided in AI, *Libya's Dark web of collusion*, December 2017, pp. 56-58.

<sup>72</sup> La Stampa, *Giro: "Fare rientrare quelle persone vuol dire condannarle all'inferno"*, 6 August 2017, <https://www.lastampa.it/cronaca/2017/08/14/news/giro-fare-rientrare-quelle-persone-vuol-dire-condannarle-all-inferno-1.34431931>

<sup>73</sup> AI, *Libya's Dark web of collusion*, December 2017, p.58. Original letter in file with AI.